

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN CINDY YOUNKIN**, on February 5, 2001 at 3:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Rick Dale, Vice Chairman (R)  
Rep. Keith Bales (R)  
Rep. Rod Bitney (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Bill Eggers (D)  
Rep. Ron Erickson (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Douglas Mood (R)  
Rep. Bob Story (R)  
Rep. Brett Tramelli (D)  
Rep. David Wanzenried (D)

**Members Excused:** Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Christopher Harris (D)

**Members Absent:** None.

**Staff Present:** Holly Jordan, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 69, 1/31/2001; HB 444,  
1/31/2001  
Executive Action: HB 135; HB 444; HB 253

**HEARING ON HB 444**

**Sponsor:** REP. ROGER SOMERVILLE, HD 78, Kalispell

**Proponents:** Jim Davison, Anaconda - Deer Lodge County, self  
Pete Boyce, ADLC CEO  
Susan Blume, ADLC Planning Director  
David Elias, ADLC Planning  
Mike McGrath, Attorney General  
Jim Flynn, Anaconda, self  
Mark Simonich, Governor's office  
Bob Lane, FWP  
Jon Sesso, Butte - Silver Bow  
Dan Dennehy, Butte - Silver Bow  
Mike Grayson, ADLC, County Attorney  
Sarah Carlson, MACD  
REP. STEVE GALLUS, HD 35, Butte  
John Wilson, Trout Unlimited  
Jeff Barber, Clark Fork Coalition

**Opponents:** None.

**Opening Statement by Sponsor:**

*{Tape : 1; Side : A; Approx. Time Counter : 0.5}*

REP. ROGER SOMERVILLE, HD 78, Kalispell, submitted written testimony **EXHIBIT**(nah29a01).

**Proponents' Testimony:**

*{Tape : 1; Side : A; Approx. Time Counter : 13}*

**Mike McGrath, Attorney General**, stated that this suit was brought to restore the damages done to the natural resources. It is independent of actions brought by the EPA but was brought under a segment of the Superfund Law. A large portion of the suit was settled in 1999 when the state collected \$215,000,000. There are three claims remaining. The Anaconda Uplands Claim could go to trial as early as summer 2001. This bill seeks a letter of credit, an opportunity to borrow money from the Coat Tax Trust Fund to pay for the litigation costs. This kind of litigation is very expensive. The money does not go to the attorneys, it goes primarily for experts. In recent years the litigation has been funded by a loan from the Coal Tax Trust. Authorization is needed, by the Legislature, to borrow again. Everything has been paid back to the Trust and General Fund, with interest, up to the 1997 loans. Last biennium, there was authorization to borrow up

to \$1.67 million which has not all been used at this point. He estimated that up to \$1,000,000 may be needed to finish up the biennium. If the money is not needed it will not be borrowed. All of the money will be paid back, with interest, with future settlements. This litigation has a huge economic impact on the entire state. The largest percentage of this case has been completed but there are three very serious and significant claims that are yet to be pursued. Those efforts will ultimately restore the natural resource for use for all Montanans.

**REP. STEVE GALLUS, HD 35, Butte**, stated this is a very important piece of litigation for the continued repair of mining activities in the upper Clark Fork. There has been a lot of progress in the repairs already. It is a good investment and needs to be continued.

**Mark Simonich, Department of Commerce, on behalf of Governor Martz**, stated that, under the Federal Superfund Law, the Governor is designated as the trustee for natural resources. Therefore, Governor Martz will be very personally and directly involved in the litigation. There has been a very good relationship between the Attorney General's office and the Governor's office in bringing this litigation forward. This litigation was approved by the legislature and it only makes sense to continue it to the end. He spoke of the previous settlements of the lawsuit and where the money went. The state will actively work with ARCO to try to reach a settlement. If a settlement cannot be reached the state will move forward with litigation in Federal Court.

**Pete Boyce, Chief Executive Anaconda - Deer Lodge County**, stated that this bill is very important to Anaconda - Deer Lodge County. He urged a do pass.

**Jim Flynn, Anaconda**, submitted written testimony  
**EXHIBIT (nah29a02)**.

**John Sesso, Butte - Silver Bow**, stated, on behalf of Chief Executive Judy Jacobsen and the governing body, he rises in support of HB 444. It is very vital to finish this job. The settlement of 1998 completed most of the work. Without this support the remaining work will go undone. He urged a do pass.

**Jim Davison, Anaconda - Deer Lodge County, self**, stated, Anaconda - Deer Lodge County sees over 300 square miles devastated with the results of past mining and smelting, subject to this Superfund action. Over 400,000 acre feet of water will never be restored. This funding will help restore some of the effects of that permanent loss to the state.

**Bob Lane, FWP**, submitted written testimony **EXHIBIT (nah29a03)** .

**John Wilson, Trout Unlimited**, stated, for the reasons stated in Mr. Lane's testimony Trout Unlimited rises in support of HB 444.

**Jeff Barber, Clark Fork Coalition**, stated, the Clark Fork Coalition is in full support of this bill.

**Steve Schnitz, DNRC, for Sarah Carlson, Montana Association of Conservation Districts**, submitted written testimony **EXHIBIT (nah29a04)** .

**Susan Blume, ADLC Planning Director**, stated, Anaconda residents want to see this litigation go forth. Anaconda is still handicapped and this litigation will enable continuation of the restoration.

**Jerry Wells, Helena, self**, stated, it is important that people realize that the advisory council, under Chairman Flynn's direction, has done a remarkable job in restoration. This litigation is tremendously important for the Anaconda and Butte areas.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : A; Approx. Time Counter : 31}***

**REP. LAIBLE** asked **Mr. Simonich** if he has received about \$230,000,000 so far from ARCO's settlement. **Mr. Simonich** stated, that is correct. **REP. LAIBLE** followed up asking, if all this money has not been spent can you just borrow the money from the settlement? **Mr. Simonich** stated, that is not possible. The components from the settlement were for very specific purposes approved by the court.

**REP. ERICKSON** asked **Attorney General McGrath** is there a possibility that another loan will be needed in two years from now. **Attorney General McGrath** stated, that depends but another loan will probably be needed in two years.

**Closing by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 34.7}***

**REP. SOMERVILLE** stated that the judge overseeing this process passed away last year. That throws another delay crutch in this

process. A new Federal Judge must be assigned and briefed on this case. This is an important issue and the legislature would be doing the right thing in pursuing it. It is going to take some time to do the restoration but it is very important for the state. He asked for a do pass.

**HEARING ON HB 69**

**Sponsor:** REP. MATT MCCANN, HD 92, Harlem

**Proponents:** Jan Sensibaugh, DEQ

Mona Harrell, Hilger, self  
Steve Gilbert, Helena, self  
Daniel Harrell, Hilger, self  
Dean Stiffarm, Fort Belknap Tribes  
SEN. TOM BECK, SD 28, Deer Lodge  
Cesar Hernandez, Somers, Cabinet Resource Group  
REP. EILEEN CARNEY, HD 82, Libby  
SEN. ED BUTCHER, SD 47, Winifred, for Stephanie and  
Alan Shammel  
Janet Zimmerman, Pony, self  
Russ Ritter, Montana Resources  
Bill Ralph, Sweetgrass County, self  
Richard Parks, NPRC  
Stan Frazer, Lewis and Clark County Conservation  
District  
Karen Davidson, Basin, self  
John Wilson, Trout Unlimited  
Mike Judge,  
Lewis Harrell, Hilger, self  
E. K. Ralph, Sweetgrass County  
Dick Pattison, Montana Senior Citizens and Lincoln  
and Blackfoot Legacy  
Lee Pattison, Blackfoot Legacy Chair  
M. Susan Good, Helena, self  
Jeff Barber, MWF, CFC and MCAFS  
Pete Boyce, Anaconda-Deer Lodge County  
Andy Huff, ILRC  
Bonnie Gestring, MEIC  
Patrick Judge, MEIC  
Jeff Barber, Montana Wildlife Federation, Clark Fork  
Coalition and the Montana Chapter of the American  
Fisheries Society

**Opponents:** Angela Janacaro, Montana Mining Association

Mark Johnson, Helena, self  
Ken Lutz, Hamilton, self

Steve Hicks, White Sulphur Springs, self  
 Leo Barry, Helena, National Fire Insurance Company of  
 Hartford  
 Doug Parker, ASARCO  
 Ted Antonioli, Montana Mining Association, Missoula  
 Chapter  
 Ernest Nelson, Missoula, self  
 Raymond Lazuk, Golden Sunlight Mines  
 John Wright, Townsend, self  
 Pete Northcutt, Big Timber, Lodestar Mining  
 Gary Owen, Northwest Montana Gold Prospectors  
 Deb Thompson, Spokane Bar Sapphire Mine  
 Harm Toren, Columbia Falls, self and Grandchildren  
 Maurice Johnson, Kalispell, self  
 Delbert Hunt, Helena, self  
 Alan Wright, Townsend, self  
 Bruce Macetty, Columbia Falls, self  
 Alan Gilda, Helena, self  
 John Parks, Barretts Minerals  
 John Hanson, Luzenac America  
 William Kraemer, Luzenac America  
 Don Tibbs, Montana Mining Association, Ravalli Chapter  
 Ralph Luther, Gold Prospectors Association  
 Bruce Cox, Missoula, self  
 Tad Dale, Majesty Mining  
 John Schaefer, Montana Tunnels  
 Dirk Nelson, Montana Tunnels  
 Melinda Gilda, self  
 Trent Axtell, NWGPA  
 Mike Collins, Helena, self  
 Tim Ravndal, MFMV  
 Jack Mohon, Townsend, self  
 Farrell Madsen, Townsend, self  
 Gary Wilmeg, NWGR  
 Gary Hall, NWMGP  
 Norman Boughed, NWMGP  
 Steve Hicks, White Sulphur Springs, self  
 Dan Nelson, Helena, self  
 Tom Weitz, Helena, Beal Mountain Mine  
 Bruce Parker, Beal Mountain Mine  
 Kel Buchanan, Beal Mountain Mine  
 Jim Young, Philipsburg, self  
 Bill Wibberding, Drummond, self

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 39.1}

**REP. MATT MCCANN, HD 92, Harlem,** stated that HB 69 came about due to a discussion in finance committee regarding exposure to the State of Montana due to the lack of bonding, initially to reclaim the Zortman Landusky mine. The solution of bonding for reclamation is possible if the statutes and the reclamation plans are recognized as having fairness and common sense. He passed out two sets of amendments **EXHIBIT (nah29a05)** **EXHIBIT (nah29a06)**. HB 69 instructs all small miners to post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. HB 69 recognizes that a small mine reclamation is as financially draining to the people of Montana as a poorly bonded large operation.

**Proponents' Testimony:**

*{Tape : 1; Side : A; Approx. Time Counter : 42.9}*

**Jan Sensibaugh, DEQ,** submitted written testimony **EXHIBIT (nah29a07)**.

**Mona Harrell, Hilger, self,** submitted written testimony **EXHIBIT (nah29a08)**.

**Steve Gilbert, Helena, self,** stated that every mine has had some type of failure that effects water quality, fish, wildlife and habitat. He asked for a do pass.

**Daniel Harrell, Hilger, self,** submitted written testimony **EXHIBIT (nah29a09)**.

**Dean Stiffarm, Fort Belknap Tribes,** stated that the tribes are against mining because they destroy the land. Contaminated water may have to be treated forever because of the pollution. He urged a do pass.

**Andrew Huff, ILRC,** stated, a lot has been learned from the Zortman Landusky site. The main thing that has been learned is that large, multi-national corporations can go bankrupt in the blink of an eye. This bill protects the state from financial liability in the event of mining projects that go bad. It's too late for the situation at Zortman Landusky but it teaches the state a lesson. He urged a do pass.

**SEN. TOM BECK, SD 28, Deer Lodge,** stated, he worked on this bill in the finance committee. The beginning projection was to try and do reclamation without costing general fund or taxpayer dollars. One of the things that was identified was that on certain projects the bonds were too low. He gave some examples

regarding Zortman Landusky. **{Tape : 1; Side : B; Approx. Time Counter : 0.1}** He stated that he is not out to hurt anybody he is just trying and help the general taxpayers.

**Cesar Hernandez, Somers, Cabinet Resource Group**, stated that several mines have inadequate reclamation bonding that will soon leave the taxpayers of Montana holding an empty bag. He presented a check to the committee **EXHIBIT(nah29a10)** representing what his share of the unbonded reclamation liability to Montana. He suggested \$1.00 per ton for reclamation.

**REP. EILEEN CARNDY, HD 82, Libby**, submitted written testimony **EXHIBIT(nah29a11)**.

**SEN. ED BUTCHER, SD 47, Winifred, for Stephanie and Alan Shammel**, submitted written testimony **EXHIBIT(nah29a12)**. He stated that this will not stop development of minerals, it will help the people of Montana.

**Janet Zimmerman, Pony, self**, stated that she lives adjacent to the Pony mill. The Pony operation is a mill site, not a mine, but the lesson is the same. She gave a history of the Pony mill and it's bankruptcy. She stated that Montana's Reclamation Bonding requirements must be strengthened to protect the state from liability and to protect adjacent land owners. She stated that she particularly supports adding a contingency amount to the final bond determination. Unanticipated developments frequently occur which may add substantially to the cost of reclamation. She urged the committee to support HB 69.

**Russ Ritter, Montana Resources**, stated that MRI supports the bill along with the amendments.

**Bill Ralph, Sweetgrass County, self**, submitted written testimony **EXHIBIT(nah29a13)**.

**Richard Parks, NPRC, Gardiner**, submitted written testimony **EXHIBIT(nah29a14)**.

**Stan Frazer, Lewis and Clark County Conservation District**, stated that the Lewis and Clark County Conservation District supports HB 69. He submitted a letter from the North Powell Conservation District **EXHIBIT(nah29a15)**.

**Karen Davidson, Basin, self**, stated that she is in support of HB 69 and handed out two exhibits **EXHIBIT(nah29a16)** and **EXHIBIT(nah29a17)**.



**John Wilson, Trout Unlimited**, submitted a map showing polluted waters **EXHIBIT(nah29a18)** and written testimony **EXHIBIT(nah29a19)**.

**Mike Judge**, submitted a document on Current Metal Mine Permits **EXHIBIT(nah29a20)**.

**Jeff Barber, Montana Wildlife Federation, Clark Fork Coalition and the Montana Chapter of the American Fisheries Society**, stated that he strongly supports HB 69 in its current form.

**Drew Carr, Missoula**, submitted written testimony from Holly Miller of Dillon **EXHIBIT(nah29a21)**.

**Lee Pattison, Blackfoot Legacy Chair**, stated that Blackfoot Legacy supports HB 69.

**Opponents' Testimony:**

***{Tape : 1; Side : B; Approx. Time Counter : 17}***

**Angela Janacaro, Montana Mining Association**, stated that she has worked with **REP. MCCANN** to try to reach an agreement in this bill but could not reach a consensus. She recommended a do not pass for the following reasons. On page 6, starting on line 2, there is language addressing the small miner posting bonds. A small miner is an individual disturbing five acres or less in a mining operation. This language places a small miner under the same standards as a full scale mining operation. Many times these individuals are unable to generate the capitol required to bond under such standards. This bill compares apples to oranges. It places a small miner with a backhoe and five acres to be held under the same standards as a corporate mining operation. The small miner is attempting to run a small corporation out of their own pocket book. Page 14, lines 22 and 23, requires the permittee to post a 10% contingency for any unforeseen reclamation failures. The Department and others claim this is necessary to address the problems that have arisen in mines such as Zortman - Landusky. The unfortunate circumstances surrounding Zortman make good arguments for the proponents of HB 69 but the fact remains that the DEQ signed off on the reclamation plan and agreed to the adequacy of the bond amount. Some responsibility must lie within the Department to make accurate bond calculations and reasonable reclamation plans. She submitted a chart from the DEQ **EXHIBIT(nah29a22)** and went over it. Another area of concern in the bill is on page 18, line 3 where the Department wishes to hold a 10% contingency for ten years. This is after the company has complied with the reclamation requirements and the Department has deemed the reclamation complete. This is a needless

requirement if the Department does it's job in determining an appropriate plan. On page 15, line 10, it offers a 30 day public comment period on the final bond determination. While the public is involved in many areas such as the EIS, the public does not have the requirements that are necessary in setting a bond amount. The condition precedent which is on page 15, line 16, also causes concern. It requires a permittee to post a disputed bond before obtaining a hearing with the department. She recommended that the committee send the bill into a study committee where all parties are represented and the result is a pro-business piece of legislation.

**Mark Johnson, Helena, self**, submitted written testimony **EXHIBIT (nah29a23)** and pictures of his reclamation **EXHIBIT (nah29a24)**.

**Ken Lutz, Hamilton, self**, stated that he is a small miner who mines for sapphires in the Philipsburg area. He stated that he caters to the tourism industry. This bill will adversely affect the small miners. That will also affect the people who depend on the small miners for gemstones. He recommended a do not pass.

**Steve Hicks, White Sulphur Springs, self**, stated he is a part-time consulting geologist who deals exclusively with small miners. He stated that government regulations and needless laws hamper the small mining industry. He stated that there are responsible miners and doesn't appreciate being labeled a "rape and run" miner.

**Leo Barry, Helena, National Fire Insurance Company of Hartford**, stated that everybody wants to be sure that there is a process in place where the state is holding adequate security such that the monies will be available for reclamation. We also need to make sure that the provisions function properly and work in the real world. He went over some concerns he has with the bill. He stated that he will work with **REP. MCCANN** and the DEQ to come up with some sort of solution.

**Doug Parker, ASARCO**, stated that he has concerns about the unforeseen 10% contingency. That makes it difficult to get surety bonds and misses the point that bonds need to be set on actual problems or potential problems that may occur. The real insurance behind the mining industry is the RIT fund.

**Ted Antonioli, Montana Mining Association, Missoula Chapter**, stated that the main problem with mining in the state is that the industry is disappearing. He asked the committee to consider what the cause of this dramatic reduction of the mining industry is and what it's affect is. State regulation is already

perceived by mineral investors as being far too stringent in the state of Montana. We are the second worst jurisdiction in terms of being black balled for mining investment. We are black balled by 78% of those people who are decision makers in the mineral industry. He went over some reasons for this. Four of the top six counties of the state for wages are mining counties. Mining is a fragile industry that has taken a lot of knocks. Montana's mining industry is one of the cleanest in the world. The RIT is to indemnify the people of Montana from problems that arise in the natural resources industry.

**Ernest Nelson, Missoula, self,** stated that he believes that HB 69 is focused in the wrong direction. It strangles, with additional regulation, the small and medium sized miners. It totally absolves the DEQ of any responsibility for the failures that happen. Everyone in the industry, as taxpayers, has the right to expect the DEQ to have the expertise to be able to get the bonding correct. He asked that everyone be included in a study to address the problem and look for a solution.

**Raymond Lazuk, Golden Sunlight Mines,** stated that the biggest problem Golden Sunlight has with the bill has to do with the contingency. The mine's experience with reclamation bonding is such that there is a number of conservative measures that are built into a bond calculation. He gave examples of this. He went over Golden Sunlight's bond calculation. He stated that the 10% added onto the bond for unforeseen costs doesn't really address the real problem. The real problem has to do with identifying and characterizing the environmental risk at the beginning of the process, not at the end of it. There are tools out there to do that. He also talked about the RIT and the Orphan Share programs. These programs were developed and implemented to finance various environmental activities related to natural resources industries. The mines pay into these funds for that purpose.

**John Wright, Townsend, self,** stated that there are too many laws now that hurt the mining industry. We need mining to survive. Montana has the greatest resources and largest workforce on earth. Unfortunately we don't have the government with the initiative, will or want to make it all work. He stated that he is an ex-small miner put out of business by the DEQ. He talked about the Pegasus mine. He stated that we don't need new laws we just need enforcement of current laws.

**Pete Northcutt, Big Timber, Lodestar Mining,** stated that he is against the bill as it is currently written.

**Gary Owen, Northwest Montana Gold Prospectors,** stated that this bill eliminates the small miner exemption. It is going to send a message to small miners that they are not welcome in Montana.

**Deb Thompson, Spokane Bar Sapphire Mine,** stated that this bill will destroy the mining industry, tourism and small business in Montana.

**Harm Toren, Columbia Falls, self and Grandchildren,** showed the committee a gold pan and stated that this bill will include him as a small miner.

**Maurice Johnson, Kalispell, self,** stated that he is a hobby miner and this bill does not fit people like him.

**Delbert Hunt, Helena, self,** stated that he is a small miner and opposes the bill.

**Alan Wright, Townsend, self,** stated that he is a small miner who believes that there are enough regulations.

**Bruce Macetty, Columbia Falls, self,** stated that he is opposed to the bill as it discriminates against small miners.

**Alan Gilda, Helena, self,** submitted written testimony  
**EXHIBIT** (nah29a25) .

**John Parks, Barretts Minerals,** stated, as presently written Barretts Minerals is in opposition of the bill.

**John Hanson, Luzenac America,** stated, as presently written he is in opposition of the bill.

**William Kraemer, Luzenac America,** stated, as presently written he is in opposition of the bill as it is unnecessary.

**Don Tibbs, Montana Mining Association, Ravalli Chapter,** stated that he is a small miner and recommended a do not pass on HB 69.

**Ralph Luther, Gold Prospectors Association,** stated that this bill is against small miners

**Bruce Cox, Missoula, self,** submitted written testimony  
**EXHIBIT** (nah29a26) .

**Tad Dale, Majesty Mining,** stated that he is a registered professional mining engineer. Majesty Mining and Golden Sunlight Mine are the only companies in the state that holds a cyanide

operating permit. He has a \$50,000 bond on a less than four acre leach pad and a three acre open pit. He recommended that the committee kill HB 69 and come up with something better in the interim.

**John Schaefer, Montana Tunnels**, stated that he is opposed to HB 69.

**Dirk Nelson, Montana Tunnels**, stated that he is in opposed to HB 69 and invited the committee to Montana Tunnels to see an example of responsible mining at a large scale.

**Melinda Gilda, self**, stated that she is opposed to the bill.

**Trent Axtell, NWGPA**, stated that he thinks this is a very bad bill.

**Tim Ravndal, MFMV**, submitted written testimony **EXHIBIT(nah29a27)**.

**James E. Volberding, CR Kendall**, submitted written testimony **EXHIBIT(nah29a28)**.

**Rick Jordan, Golden Sunlight Mine**, submitted written testimony **EXHIBIT(nah29a29)**.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : B; Approx. Time Counter : 60}***

**REP. BROWN** asked **REP. MCCANN** how he would answer the opponents saying that the DEQ is already answering the problem with bonding and the lack of need for HB 69. **REP. MCCANN** stated that he is hearing the industry saying they are ok with the bill with the amendments he offered. The amendments deal with the contingency and the holding of interest. He stated that he doesn't know how to answer the small miners' concerns. He spoke of the Zortman - Landusky situation.

***{Tape : 2; Side : A; Approx. Time Counter : 0.1}***

**REP. CURTISS** asked **REP. MCCANN** how much money has accrued in the RIT fund. **REP. MCCANN** stated, it is approaching \$100,000,000. **REP. CURTISS** followed up asking how that money is being spent right now. **REP. MCCANN** stated that it is being spent on resource development. There is approximately \$3.5 million that goes out into water projects and about the same amount goes into reclamation. **REP. CURTISS** then asked if there is money in the Renewable Resource Development Account for the water and why is

it taken out of the RIT. She then asked for a diagram on how the money in the Coal Trust is divided. **REP. MCCANN** stated that the RIT is split into two different accounts, resource development and reclamation. The legislature has made the decision not to use the Renewable Resource Development Account for reclamation.

**REP. ERICKSON** asked **REP. MCCANN** if it is the case that the RIT portion that is to be used for reclamation has been used for years but there are still many mines that have not been reclaimed from the days that there were not bonds. **REP. MCCANN** stated yes. **REP. ERICKSON** followed up asking for information on what mines have yet to be reclaimed. **REP. MCCANN** stated that he would ask the Department for that information.

**REP. ERICKSON** asked **Ms. Sensibaugh** asked what went on, in terms of dollars, that led to this bill. Also, has that changed any since the Legislative Finance Committee first met. **Ms. Sensibaugh** stated, with the Pegasus bankruptcy, the state has taken over reclamation at those sites. The state is short, for the Zortman - Landusky sites, an additional \$8,000,000. During the bankruptcy proceedings, the state only received an additional \$1,000,000 for the reclamation. That left the state \$7,000,000 short from the reclamation which the Department thought needed to be done at that time. Subsequent to that, the Department has been doing an EIS with the tribes, BLM and EPA to determine the correct reclamation at the site. The alternative has not been chosen yet but all indications are that the state will need even more than the additional \$7,000,000. A water quality problem was identified at the Beal Mountain mine which will leave the state \$4,000,000 short. The Forest Service will be sharing in the cost of that reclamation. There have not been any shortfalls identified. Also, there are some ongoing bonding requirements for water treatment at Zortman - Landusky. There is a water treatment facility at both Zortman and Landusky that the DEQ has to continue to operate indefinitely. The state is short about \$100,000 a year for operation of those water treatment plants. The reclamation plan has not been finalized at the Kendall mine. **REP. ERICKSON** followed up asking if she has some direct information about how many times the DEQ comes up against problems with small miners. Also, what kind of general loss, per small miner, is occurring out there. **Ms. Sensibaugh** deferred the question to **Pete Strazdas, DEQ**. **Mr. Strazdas** stated that the state has forfeited small miner bonds six times since bonding was initiated in 1989. Four of the six times the \$5,000 maximum proved inadequate. As of November 2000, the average reclamation cost is \$2,900 per acre but that is with a wide range ranging from \$607 per acre to \$35,000 per acre. **REP. ERICKSON** asked for some written data on these issues.

**REP. DALE** asked **Ms. Sensibaugh** if Zortman - Landusky complex and the Kendall mine were operating under an approved reclamation plan at the time that the state took over the reclamation. **Ms. Sensibaugh** stated, the Zortman - Landusky was operating under an approved reclamation plan. The DEQ has been negotiating with the Kendall mine for years to get an approved reclamation plan at that site. **REP. DALE** followed up asking if the state changed the reclamation plan once they took over the reclamation. **Ms. Sensibaugh** stated yes, the reclamation plan at Zortman - Landusky asked for and assumed that there would be concurrent reclamation going on at the same time expanded mining was going on. When the state took over reclamation of the site, without the mining expansion, DEQ had to redo the reclamation plan for a mine that did not do that expanded mining. **REP. DALE** followed up asking if she knows the average cost, per acre, of the cost to reclaim for private industry. **Ms. Sensibaugh** stated no but she can get that information. **REP. DALE** asked her to include that in the comparison of average costs.

**REP. CURTISS** asked **Mr. Strazdas** why the correspondence only goes back to 1989. **Mr. Strazdas** stated that bonding for small placer mines started in 1989. **REP. CURTISS** followed up asking the amount of the liability relative to the two failures to reclaim. **Mr. Strazdas** stated that he will get that information to the committee before executive action.

**REP. STORY** asked **Mr. Strazdas** how many applications the Department receives each year. **Mr. Strazdas** stated, in the year 2000 there were 18 applications. **REP. STORY** followed up asking if that is where things have been since the price of gold dropped. **Mr. Strazdas** stated it is about half. The long term average is 30 per year. **REP. STORY** followed up asking **Mr. Strazdas** if he was involved in the drafting of HB 69 and were any small miners involved. **Mr. Strazdas** stated that he was but no small miners were.

**REP. ERICKSON** asked **Ms. Sensibaugh** if the amendments will get rid of the 10% contingency and if so, what will be taking it's place. **Ms. Sensibaugh** stated, the 10% contingency, just on the total amount of the bond, will go away. In it's place will be an evaluation by reclamation component of the risk associated with successful reclamation.

**REP. DALE** asked **Ms. Sensibaugh** what other fees might small miners face as they are going through a permitting process or as they deal with DEQ. **Ms. Sensibaugh** stated they would just face the fees in the Metal Mine Reclamation Act. There would be an additional fee if they needed a water quality discharge permit.

**REP. DALE** followed up asking what that fee might be. **Ms. Sensibaugh** stated she did not know but it would depend on the amount of water discharged and the pollutants in the discharge.

**REP. STORY** asked **Mr. Strazdas** who has to have a small mine permit. **Mr. Strazdas** stated there is a bond threshold on who is regulated as a small miner and that is a person who disturbs 100 square feet of the earth's surface or moves 50 cubic yards of material from an underground mine or uses blasting agents or mechanized excavated equipment. Recreational miners typically are not regulated. If they operate as an association or a gem and mineral club they will be regulated for accumulative disturbance. **REP. STORY** followed up asking for a run down of the law for people who have to have a permit. **Mr. Strazdas** stated that the people who are regulated are those who are over the threshold stated above. These people must file a Small Miners Exclusion Statement, a one-page plan of operation and submit a location map of their operations. If they are placer operators and they are not grand fathered from bonding they must bond to a maximum of \$10,000 or whatever is required that is less than that. 46% of the Department's bonds are less than \$10,000 at this time. Hard rock operators are not required to bond or reclaim. The placer operators, since 1989, are required to reclaim.

**Closing by Sponsor:**

***{Tape : 2; Side : A; Approx. Time Counter : 22.5}***

**REP. MCCANN** stated that he supports the mining industry and is not in support of closing it down. He stated that everybody does need to participate in this bill. He commented that the contingency language puts the responsibility back on DEQ to do good work. He stated that he is not comfortable with using the RIT trust as that money exists for past reclamation failure. The fund does not have the capacity to address new reclamation irresponsibility. He stated that the bill is needed.

**EXECUTIVE ACTION ON HB 135**

***{Tape : 2; Side : A; Approx. Time Counter : 25}***

**Motion:** **REP. DALE** moved that **HB 135 DO PASS.**

**Motion:** **REP. DALE** moved that the **AMENDMENTS ON HB 135 BE ADOPTED.**

**Discussion:**



The amendments were passed out **EXHIBIT**(nah29a30) .

**REP. FISHER** explained the amendments.

**REP. GUTSCHE** asked **REP. FISHER** if the amendments exempt the Department of Transportation. **REP. FISHER** stated that amendment #18 exempts D.O.T. except the Department shall complete the initial inventory required in section 4 and shall submit a progress report to the 59<sup>th</sup> Legislature.

**REP. CURTISS** asked **REP. FISHER** if he planned to allocate some of this money for water quality monitoring on Flathead Lake. **REP. FISHER** stated that page 4 states that the annual interest earned from an amount up to \$500,000 of the Trust must be used to study water quality in Montana's rivers, lakes and streams. The Board, in conjunction with the University system's Flathead Lake biological station, shall direct the studies and determine the scope and purpose.

**REP. STORY** asked **REP. FISHER** asked if every parcel the state has would be potentially used for land exchange. **REP. FISHER** stated that amendment 7 was put in by the Fish and Game Department. It goes back to a change in the system. That's one of the concerns the Department had. Wetlands and historic sites are not saleable. **REP. STORY** followed up stating that the committee just passed a bill allowing the Department of Transportation to sell their wetlands. **REP. FISHER** stated the Department of Transportation could walk on that if they chose. **REP. STORY** followed up asking if the 7<sup>th</sup> amendment excused them from having to inventory the property or just from having to put it on the surplus list. **REP. FISHER** stated, in the bill, exemption number 18 states that the Department of Transportation is exempt from the provisions of sections 1 - 9, except, the Department shall complete the initial inventory required of section 4 and shall submit the progress report to the 59<sup>th</sup> Legislature. **REP. STORY** followed up asking if the 7<sup>th</sup> Amendment is an exemption just from sale or is it an exemption from the inventory. **REP. FISHER** stated it is just an exemption from the sale. **REP. STORY** asked if the 15<sup>th</sup> amendment is to make sure that any surplus properties sold, if bought with federal money, that federal money has to go back where it was acquired. **REP. FISHER** stated, that is correct, unless the money was bought with federal funds.

**REP. GUTSCHE** asked **REP. FISHER** if amendment #16 still has "as determined by the Board" or "for other purposes determined by the Board." **REP. FISHER** stated yes.

**REP. MOOD** asked **REP. FISHER** if these amendments have created too many loopholes. **REP. FISHER** stated that the Departments will inventory the property and if it has not been used for two years the DNRC will have to authority to sell it. The amended version of the bill is very watered down from the original bill due to the concerns of the Fish and Game and the Department of Transportation.

**REP. HURDLE** asked **REP. FISHER** why the amendments take the "County Assessor" out of the assessment. **REP. FISHER** stated that was at the request of the Department of Revenue because they don't have assessors in some counties.

**REP. EGGERS** asked **REP. FISHER** to explain page 2 of the Fiscal Note. **REP. FISHER** stated that he did not sign the Fiscal Note and doesn't see how you can lose \$84,000 the first year and \$58,000 the second year when you are selling property and recapturing the income from it. You are putting the property back on the tax rolls on the county in which it is located. **REP. EGGERS** asked **REP. FISHER** to explain the provision in the Fiscal Note regarding Silver Bow Creek. **REP. FISHER** stated that point was brought up by the Department of Water Quality. He went over their concerns. **REP. EGGERS** asked if the legislation is drafted in such a way that the state could buy property that is in need of remediation and restoration, do nothing on that land so it doesn't qualify as being used and within two years put it on the inventory list and sell it without remediation and reclamation. **REP. FISHER** stated that land would be declared surplus but it would not be saleable until it was remediated because no one would buy it.

**REP. CURTISS** asked **REP. FISHER** to cancel out the Fiscal Note shouldn't there be language in the bill that the expenses of the Departments would be reimbursed against whatever the amount accumulated from the sales would bring. **REP. FISHER** stated that the only Department that gave indication that they wanted to have that done was the DNRC because they were going to be exposed to quite a bit of work and labor. That is why, on the last page of the bill, they are allowed \$100,000 to offset their costs in accumulating this information. The other Departments should have the inventory already.

**REP. LASZLOFFY** asked **REP. FISHER** to give an example of a federal stipulation that requires the use of federal appraiser. **REP. FISHER** stated that came from the Department of Fish and Game. He explained why.

**REP. GUTSCHE** asked **REP. FISHER** regarding page 4, line 16 of the bill, it looks like a department or local government was added

in. **REP. FISHER** stated that he received a call from Lake County and they were concerned about getting a piece of surplus property. Amendment #17 gives the Governor the right to look at the property to see if it can be conveyed to another state agency who may need it.

**Vote:** Motion to approve the amendments **carried 15-5 with Erickson, Gutsche, Harris, Hurdle, and Wanzenried voting no.**

**Motion:** **REP. DALE** moved that **HB 135 DO PASS AS AMENDED.**

**Discussion:**

**REP. ERICKSON** asked **REP. FISHER** what exactly does the bill do? Does the Department have to sell a certain area? **REP. FISHER** stated yes, once it is identified as surplus and it is determined as saleable.

**REP. HURDLE** asked **REP. FISHER** are their other criteria for surplus land other than not having been used for two years. **REP. FISHER** stated no. **REP. HURDLE** asked what it means not to use something for two years. Does it mean that a big chunk of forest land not being used for two years can be sold for timber. **REP. FISHER** referred to line 17 of the bill stating 200 acres or less. School trust land will not be saleable. **REP. HURDLE** then asked, will everything else that hasn't been used for two years be up for sale by state agencies. **REP. FISHER** stated yes. He stated that he doesn't want to sell off something that will injure the remainder but there is a lot of state property that has been forgotten about which could be useful. **REP. HURDLE** followed up asking if there is any criteria in the sale of the land, how do you know that they are not just going to sell it to their friends for a cheap price. Is there a criteria about who will know about this land or advertising it. **REP. FISHER** stated yes. He referred to page 3 of the bill. The real estate cannot be sold at less than appraised value.

**REP. GUTSCHE** stated that the inventory part of the bill is good but the sale part is not. She talked about the hearing stating that she has a concern with the possible opponents of the bill. **REP. FISHER** stated that the D.O.C. will be the sales agent and the property will come from the various Departments who, at the present time, don't know how to get rid of it.

**REP. BALES** asked **REP. FISHER**, regarding amendment #17, does that give the Governor the authority to transfer land to the county without any cost or without selling it. **REP. FISHER** stated yes. **REP. BALES** asked what is the rationale for that, to give it to the

counties rather than having them bid for it. **REP. FISHER** stated, the taxpayers have paid for this property once. If the counties paid for it they would be paying for it twice. **REP. BALES** stated that he thinks the purpose of this bill is to get land back into the private hands and out of the governments hands. Just transferring it to a county entity is not the way we ought to go. **REP. FISHER** stated that he would agree and would accept an amendment to that extent.

**Motion:** **REP. BALES** moved to **DELETE AMENDMENT #17 (OR LOCAL GOVERNMENT)**.

**Discussion:**

**REP. ERICKSON** stated that he is against the amendment as that amendment does a positive thing. He stated that there are, on the outskirts of towns and even in towns, lands that are state lands that could be used for city parks. He gave an example in Missoula.

**REP. BROWN** stated that she agrees with **REP. BALES** but she also thinks that it would be to the state's best use to give some of the parcels back to local government with the requirement that they have to lease for an income producer for that area.

**REP. STORY** stated that if the language is left in to allow the local governments to be given a parcel of property there is nothing in the bill that requires that parcel of property to be a parcel of property within the jurisdiction of that local government.

**Vote:** Motion failed 9-11 with Bales, Bitney, Clancy, Curtiss, Dale, Laible, Laszloffy, Mood, and Story voting aye.

**Motion:** **REP. STORY** moved to **STRIKE EVERYTHING IN THE HB 135 FROM SECTION 5 ON, EXCEPT FOR THE EFFECTIVE DATE.**

**Discussion:**

*{Tape : 2; Side : B; Approx. Time Counter : 0.1}*

**REP. STORY** stated that the committee should either fix the bill or just send it out as an inventory bill.

**REP. YOUNKIN** stated that **Mr. Mitchell** will have the latitude to also amend the title of the bill as necessary to reflect those deletions.

**Vote:** Motion carried 19-1 with Curtiss voting no.

**Motion/Vote:** REP. LASZLOFFY moved that HB 135 DO PASS AS AMENDED, AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 444**

*{Tape : 2; Side : B; Approx. Time Counter : 2.5}*

**Motion:** REP. GUTSCHE moved that HB 444 DO PASS.

**Discussion:**

The committee discussed the rules of capitalizing certain words in bills.

**Vote:** Motion carried unanimously.

**EXECUTIVE ACTION ON HB 253**

*{Tape : 2; Side : B; Approx. Time Counter : 5.6}*

**Motion:** REP. DALE moved that HB 253 DO PASS.

**Motion/Vote:** REP. CLANCY moved that the AMENDMENTS FOR HB 253 BE ADOPTED. Motion carried unanimously.

**Motion:** REP. DALE moved that HB 253 DO PASS AS AMENDED.

**Discussion:**

REP. MOOD stated that he likes HB 253. It is an interesting discussion to think about what was envisioned for this country when the Constitution was written. He stated that in the last 30 years his opinion of what federal lands do to an area has completely changed. At one time he believed that federal lands were stabilizing in effect and today that is exactly the opposite. Local economies can't exist with a vacant landowner that does not participate in the local economy. He stated that for that reason he will vote for the bill.

REP. STORY stated that he does not disagree with REP. MOOD's analysis but what happens if the committee passes the bill. It will go to the floor where there will be a long debate. If it passes on the floor the Senate will kill it. He stated that he would like to see the Federal Government sell the land too but that is probably not going to happen.

REP. CURTISS referred to the Sagebrush Rebellion. One of the arguments against this was that it would cost too much to lose a

lawsuit. The proponents stated that there is a provision in the constitution which says that cases of State v. Federal Government would be heard in the U.S. Supreme Court and would not be going to the 9<sup>th</sup> District Circuit Court at all. She stated that she is going to support the bill just to see where it will go.

**REP. EGGERS** stated, the 13 original states were exempted with regard to federal properties and lands within their states. That was part of the original agreement. Thereafter, with regard to the subsequent states, the states were either given property or not depending upon how that property was acquired by the U.S. Government. He gave some examples. Montana is in the Louisiana Purchase and is not in the same exemption category as the 13 original states. He stated that a suit would fail due to this. The federal government owned the land prior to the statehood so they could dictate to the state what it would give the state upon statehood. Contesting that would be a very serious uphill battle.

**REP. CURTISS** stated that apparently the granting of statehood was contingent upon signing a release of all rights to title. If they require that you sign all rights away to those titles you must have had some right in the beginning. Was it constitutional for them to do that in the first place?

**REP. LASZLOFFY** asked **REP. EGGERS** if Montana was given all of its rightful land that is listed in the enabling legislation. **REP. EGGERS** stated that he believed so. Thousands of acres of school trust lands were even given to the state of Montana all across the state. He explained how the federal government went about doing that.

**Motion/Vote:** **REP. GUTSCHE** moved that **HB 253 BE TABLED. Motion failed 10-10 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Story, Tramelli, Wanzonried, and Yunkin voting aye.**

**REP. STORY** stated, if everyone were to assume that title to the lands in the state of Montana should have transferred from the Federal Government with statehood, then everyone who has ever acquired a homestead, since 1889, title is clouded. They got their title from the Federal Government, not from the state of Montana.

**REP. YOUNKIN** stated that it is folly for the state of Montana and for the Legislature to direct the Attorney General to proceed with losing litigation. She also stated that she agrees 100% with what **REP. MOOD** said but the litigation is not realistic. It is a waste of taxpayer dollars.

**REP. LASZLOFFY** stated that the enabling statute either said this or it didn't. That is the contract that lays out how the state became a state.

**REP. MOOD** asked if the Louisiana Purchase was exclusive to the Missouri River Drainage.

**REP. YOUNKIN** stated no, it went to the Continental Divide.

**REP. DALE** stated that the interesting part of this is that this case has never been heard in the Supreme Court yet the Constitution provides for that. Being the holder of a federal patent doesn't guarantee you don't have a clouded title anyway. Federal Governments have tried to sell the same land twice a number of times. He stated that he would like to see this issue raised.

**REP. YOUNKIN** stated that when you go to the U.S. Supreme Court, especially on original jurisdiction, they don't even have to listen to you.

**Vote:** Motion that **HB 253 DO PASS AS AMENDED failed 8-12 with Bales, Bitney, Brown, Clancy, Curtiss, Dale, Laible, and Mood voting aye.**

**REP. YOUNKIN** reversed the do pass motion to a table motion. Therefore, the table motion passed 12-8.

**ADJOURNMENT**

Adjournment: 6:30 P.M.

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REP. CINDY YOUNKIN, Chairman

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HOLLY JORDAN, Secretary

CY/HJ

**EXHIBIT (nah29aad)**